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UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

Service and Regulatory Announcements No. 148

UNITED STATES GRAIN STANDARDS ACT
AS AMENDED

and the
Regulations thereunder (as amended)

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United States Department of Agriculture

AGRICULTURAL MARKETING SERVICE

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UNITED STATES GRAIN STANDARDS ACT

As Amended

(39 U. S. Statutes at Large, p. 482; as amended July 18, 1940, (54 Stat. 765) ; as amended Aug. 1, 1956 (70 Stat. 780) ; and as amended July 11, 1958 (72 Stat. 352)

(U. S. Code, title 7, ch. 3, secs. 71-87)

That this Act shall be known by the short title of the "United States Grain Standards Act." (7 U.S.C. 71)

The word "person," wherever used in this Act, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations; the words "in interstate or foreign commerce," wherever used in this Act, mean, "from any State Territory, or District to or through any other State, Territory, or District, or to or through any foreign country, or within any Territory or District." (7 U.S.C. 72)

When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person. (7 U.S.C. 73)

SEC. 2. That the Secretary of Agriculture is hereby authorized to investigate the handling, grading, and transportation of grain and to fix and establish as soon as may be after the enactment hereof standards of quality and condition for corn (maize), wheat, rye, oats, barley, flaxseed, soybeans, and such other grains as in his judgment the usages of the trade may warrant and permit, and the Secretary of Agriculture shall have power to alter or modify such standards whenever the necessities of the trade may require. In promulgating the standards, or any alteration or modification of such standards, the Secretary shall specify the date or dates when the same shall become effective, and shall give public notice, not less than ninety days in advance of such date or dates, by such means as he deems proper. (7 U.S.C. 74)

SEC. 3. That the standards so fixed and established shall be known as the official grain standards of the United States. (7 U.S.C. 75)

SEC. 4. That whenever standards shall have been fixed and established under this Act for any grain no person thereafter shall ship or deliver for shipment in interstate or foreign commerce any such grain which is sold, offered for sale, or consigned for sale by grade unless the grain shall have been inspected and graded by an inspector licensed under this Act and the grade by which it is sold, offered for sale, or consigned for sale be one of the grades fixed therefor in the official grain standards of the United States: *Provided*, That any person may sell, offer for sale, or consign for sale, ship, or deliver for shipment in interstate or foreign commerce any such grain by sample or by type, or under any name, description, or designation which is not false or misleading, and which name, description, or designation does not include in whole or in part the terms of any official grain standard of the United States: *Provided further*, That any such grain sold, of- (7 U.S.C. 76)

ferred for sale, or consigned for sale by grade may be shipped or delivered for shipment in interstate or foreign commerce without inspection at point of shipment by an inspector licensed under this Act, to or through any place at which an inspector licensed under this Act is located, subject to be inspected by a licensed inspector at the place to which shipped or at some convenient point through which shipped for inspection, which inspection shall be under such rules and regulations as the Secretary of Agriculture shall prescribe, and subject further to the right of appeal from such inspection, as provided in section six of this Act: *And provided further*, That any such grain sold, offered for sale, or consigned for sale by any of the grades fixed therefor in the official grain standards may, upon compliance with the rules and regulations prescribed by the Secretary of Agriculture, be shipped in interstate or foreign commerce without inspection from a place at which there is no inspector licensed under this Act to a place at which there is no such inspector, subject to the right of either party to the transaction to refer any dispute as to the grade of the grain to the Secretary of Agriculture, who may determine the true grade thereof. No person shall in any certificate or in any contract or agreement of sale or agreement to sell by grade, either oral or written, involving, or in any invoice or bill of lading or other shipping document relating to, the shipment or delivery for shipment, in interstate or foreign commerce, of any grain for which standards shall have been fixed and established under this Act, describe, or in any way refer to, any of such grain as being of any grade other than a grade fixed therefor in the official grain standards of the United States.

(7 U.S.C.
77)

SEC. 5. That no person, except as permitted in section four, shall represent that any grain shipped or delivered for shipment in interstate or foreign commerce is of a grade fixed in the official grain standards other than as shown by a certificate therefor issued in compliance with this Act; and the Secretary of Agriculture is authorized to cause examinations to be made of any grain for which standards shall have been fixed and established under this Act, and which has been certified to conform to any grade fixed therefor in such official grain standards, or which has been shipped or delivered for shipment in interstate or foreign commerce. Whenever, after opportunity for hearing is given to the owner or shipper of the grain involved, and to the inspector thereof if the same has been inspected, it is determined by the Secretary that any quantity of grain has been incorrectly certified to conform to a specified grade, or has been sold, offered for sale, or consigned for sale under any name, description, or designation which is false or misleading, he may publish his findings.

(7 U.S.C.
78)

SEC. 6. Whenever standards shall have been fixed and established under this Act for any grain and any quantity of such grain sold, offered for sale, or consigned for sale, or which has been shipped, or delivered for shipment in interstate or foreign commerce shall have been inspected and a dispute arises as to whether the grade as determined by such inspection of any such grain in fact conforms to the standard of the specified grade, any interested party may, either with or without reinspection, appeal the question to the Secretary of Agriculture, and the Secretary of Agriculture is authorized to cause such investigation to be made and such tests to be applied as he may deem necessary and to determine the true grade: *Provided*, That any appeal from such inspection and grading to the Secretary of Agriculture shall be taken before the grain leaves the place where the inspection appealed from was made and before the identity of the grain has been lost, under such rules and regulations as the Secretary of Agriculture shall prescribe. Whenever an appeal shall be taken or a dispute referred to the Secretary of Agriculture under this Act, he shall charge and assess, and cause to be collected, a reasonable fee, in amount to be fixed by him. The fee, in case of an appeal, shall be refunded if the appeal is sustained. All such fees, not so refunded, shall be deposited and covered into the Treasury as miscellaneous receipts. The Secretary of Agriculture is authorized to pay employees assigned to perform appeal inspections for all overtime, night, or holiday work at such rates as he may determine and to accept from persons, Government agencies and departments, and Government corporations for whom such work is performed reimbursement for any sums paid for such work. The findings of the Secretary of Agriculture as to grade, signed by him or by such officer or officers, agent or agents, of the Department of Agriculture as he may designate, made after the parties in interest have had opportunity to be heard, shall be accepted in the courts of the United States as prima facie evidence of the true grade of the grain determined by him at the time and place specified in the findings.

SEC. 7. The Secretary of Agriculture may issue a license to any person, upon presentation to him of satisfactory evidence that such person is competent, to inspect and grade grain and to certificate the grade thereof for shipment or delivery for shipment in interstate or foreign commerce, under this Act and the rules and regulations prescribed thereunder. No person authorized or employed by any State, county, city, town, board of trade, chamber of commerce, corporation, society, partnership, or association to inspect or grade grain shall certify, or otherwise state or indicate in writing, that any grain for shipment or delivery for shipment in interstate or foreign commerce, which has been inspected or graded by him, or by any person acting under his authority, is of one of the grades of the official grain standards of the United States, unless he holds an unsuspended and unrevoked license issued by the Secretary of Agriculture: *Provided*, That in any State which has, or which may hereafter have a State grain inspection department established by the laws of such State, the Secretary of Agriculture shall issue licenses to the persons duly authorized and employed to inspect any grade under the laws of such State. (7 U.S.C. 79)

The Secretary of Agriculture may suspend or revoke any license issued by him under this Act whenever, after opportunity for hearing has been given to the licensee, the Secretary shall determine that such licensee is incompetent or has knowingly or carelessly graded grain improperly or by any other standard than is authorized under this Act, or has issued any false certificate of grade, or has accepted any money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or has violated any provision of this Act or of the rules and regulations made hereunder. Pending investigation the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without hearing: (7 U.S.C. 80)

Provided further, That no person licensed by the Secretary of Agriculture to inspect or grade grain or employed by him in carrying out any of the provisions of this Act shall, during the term of such license or employment, be interested, financially or otherwise, directly or indirectly, in any grain elevator or warehouse, or in the merchandising of grain, nor shall he be in the employment of any person or corporation owning or operating any grain elevator or warehouse. (7 U.S.C. 81)

The Secretary of Agriculture shall require every inspector licensed under this Act to keep complete and correct records of all grain graded and inspected by him, and to make reports to the Secretary of Agriculture, in such forms and at such times as he may require, showing the place of inspection, the date of inspection, the name of the elevator or warehouse, if any, to which the grain was delivered or from which it was shipped, the kind of grain, the quantity of each kind, the grade thereof, and such other information as the Secretary of Agriculture may deem necessary. (7 U.S.C. 82)

The Secretary of Agriculture, on each first Tuesday in January and each first Tuesday in July of each year shall make publication of a summary of such facts as are ascertained, showing in as great detail as possible all the facts, including a summary as to the amount and grade of grain delivered to the elevator or warehouse and the amount and grade of grain delivered from such elevator or warehouse, and the estimated amount received on sample or type by such elevator or warehouse, and the estimated amount delivered therefrom on sample or type. (7 U.S.C. 83)

SEC. 8. That the Secretary of Agriculture shall, from time to time, make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act. (7 U.S.C. 84)

SEC. 9. Any person who shall knowingly violate any of the provisions of Sections 4 or 7 of this Act, or any inspector licensed under this Act, or any person sampling grain for inspection under this Act, who shall knowingly inspect, grade, or sample improperly any grain which has been shipped or delivered for shipment in interstate or foreign commerce, or shall knowingly give any false or incorrect certificate of grade, or shall accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, and any person who shall improperly influence or attempt to improperly influence any such inspector or sampler in the performance of his duty, or shall knowingly or willfully cause, or attempt to cause, the issuance of a false or incorrect certificate of grade under this Act by deceptive loading, handling, or sampling of grain, or by submitting grain for inspection knowing that it has been so loaded, handled, or sampled, or by any other means, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or be imprisoned not more than one year, or both. (7 U.S.C. 85)

(7 U.S.C.
86)

Sec. 10. That every person who forcibly assaults, resists, impedes, or interferes with any officer or employee of the United States Department of Agriculture in the execution of any duties authorized to be performed by this Act or the rules and regulations made hereunder shall, upon conviction thereof, be fined not more than \$1,000, or be imprisoned not more than one year, or both.

(7 U.S.C.
87)

Sec. 11. That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered.

Sec. 12. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$250,000, which shall be available until expended, for the expenses of carrying into effect the provisions of this Act, including such rent and the employment of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere.

REGULATIONS UNDER THE UNITED STATES GRAIN STANDARDS ACT, AS AMENDED

(Title 7, Chapter I, Subchapter A, Part 26 of the Code of Federal Regulations)

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Subpart A—Regulations

DEFINITIONS

§ 26.1 **Words in singular form.** Words in this part in the singular form shall be deemed to import the plural form when necessary.

§ 26.2 **Terms defined.** For the purposes of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) *The act.* The United States Grain Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C. 71–87) as amended.

(b) *Person.* Individual, association, partnership, or corporation.

(c) *In interstate or foreign commerce.* From any State, Territory, or District to or through any other State, Territory, or District, or to or through any foreign country, or within any Territory or District.

(d) *Grain.* Any grain for which standards shall have been fixed and established under the act, including corn (maize), wheat, rye, oats, feed oats, mixed feed oats, barley, flaxseed, grain sorghum, soybeans, and mixed grain.

(e) *Grade.* Grade according to the official grain standards of the United States.

(f) *Inspection.* The procedure followed by a licensed inspector or a Federal grain supervisor in determining the grade of grain.

(g) *Secretary.* Secretary of Agriculture of the United States.

(h) *Department.* United States Department of Agriculture.

(i) *Administrator.* The Administrator of the Agricultural Marketing Service of the Department or any officer or employee of that Service to whom the Administrator has heretofore lawfully delegated, or to whom the Administrator may hereafter lawfully delegate, the authority to act in his stead.

(j) *Agricultural Marketing Service.* Agricultural Marketing Service of the Department.

(k) *Regulations.* Regulations made under the act by the Secretary.

(l) *Licensed inspector.* Any person licensed by the Secretary to inspect and grade grain and to certificate the grade thereof for shipment or delivery for shipment in interstate or foreign commerce under the act and regulations.

(m) *License.* A license issued under the act by the Secretary to any person to inspect and grade grain and to certificate the grade thereof.

(n) *State grain inspector.* A person duly authorized and employed to inspect and grade grain under the laws of a State having a State grain inspection department established by the laws of such State.

(o) *District.* A defined portion of the United States designated by the Administrator for the purpose of the administration of the act.

(p) *District headquarters.* A field office of the Grain Division of the Agricultural Marketing Service designated by the Administrator as the headquarters of a district.

(q) *Grain supervisor.* An officer or employee of the Department whose duties include the supervision of the inspection and grading of grain and of the certification of grade thereof, and the issuance of Federal appeal and Federal dispute grade certificates in accordance with the act and regulations.

(r) *Appeal.* An appeal taken by an interested party pursuant to section 6 of the act, from the inspection and grading by a licensed inspector of any grain which has been sold, offered for sale, or consigned for sale, or which has been shipped or delivered for shipment, in interstate or foreign commerce.

(s) *Dispute.* The submission by an interested party pursuant to section 4 of the act, of a dispute as to the grade of any grain which has been sold, offered for sale, or consigned for sale by grade, and shipped without inspection in interstate or foreign commerce, from a place at which there is no inspector licensed under the act to a place at which there is no such inspector.

(t) *Established inspection point.* A town, city, port, or other area within which a licensed inspector is located, has his license posted and approved, and performs inspection service regularly.

(u) *Designated inspection point.* A town, city, port, or other area designated by a licensed inspector, other than his established inspection point, within which he regularly performs sampling and inspection service at the request of interested parties.

(v) *Interested party.* A person financially interested in a transaction involved in an appeal or a dispute.

(w) *Appellant.* An interested party taking an appeal under the act, from an inspection and grading performed by a licensed inspector.

(x) *Complainant.* An interested party submitting a dispute as to the grade of grain, pursuant to section 4 of the act.

(y) *Respondent.* An interested party in an appeal or a dispute other than the appellant or the complainant.

ADMINISTRATION

§ 26.3 *Authority.* The Administrator shall perform such duties as the Secretary may require in enforcing the provisions of the act and of this part.

LICENSED INSPECTORS

§ 26.4 *Form of application.* Applications for licenses shall be made to the Secretary upon forms furnished for the purpose by the Administrator or by any district headquarters office. Each such application shall fully and truly state the information therein required and shall be signed by the applicant.

§ 26.5 *Application of State grain inspectors.* In case the applicant is a State grain inspector, the application shall contain or be accompanied by satisfactory evidence thereof, and shall otherwise comply with § 26.4.

§ 26.6 *Additional contents of application.* In case the applicant is not a State grain inspector, his application shall contain or be accompanied by (a) satisfactory evidence that he (1) has passed his twenty-first birthday and (2) has had at least 1 year's experience as an inspector of grain of the kind for which a license is sought, or the equivalent of such experience; (b) a schedule of the fees which it is expected will be charged for his services as a licensed inspector; (c) satisfactory assurance that he will have available to him and subject to his direction the necessary equipment and facilities for inspecting and grading grain of the kind for which a license is sought.

§ 26.7 *Applicant to be examined for competency.* Each applicant for a license, other than a State grain inspector, whose application complies with the requirements of §§ 26.4 and 26.6 shall, if so required by the Administrator, be examined, for the purpose of determining his competency, at such time and place and in such manner as may be prescribed by the Administrator or by any officer of the Department designated by him for the purpose.

§ 26.8 *Issuance of temporary licenses.* In the discretion of the Secretary, in a case of special urgency and upon presentation to him of satisfactory evidence of the competency of the applicant, without compliance with §§ 26.4 to 26.7, inclusive, a temporary license may be issued, valid only for the period therein specified, not exceeding 60 days. A temporary licensee shall be subject to all the provisions of the act and the regulations thereunder.

§ 26.9 *License, property of Department.* Each license shall be the property of the Department, but the licensee to whom issued shall, except as provided in § 26.10, have the right to the possession thereof.

§ 26.10 *Return of license.* Whenever any license shall have been superseded, suspended, canceled, or revoked, the same shall be returned to the Secretary through the district headquarters office in the inspector's district.

§ 26.11 *Conditions governing license.* Each license issued shall be on condition that the licensee will, during the term of his license, apply the standards correctly and will comply with all the provisions of the act and the regulations thereunder.

DUTIES OF LICENSED INSPECTORS

§26.12 Inspector to post license. Immediately upon receipt of his license, each licensed inspector shall submit in writing to the Administrator a statement showing (a) the name of the town, city, port, or other area, properly identified as to limits and boundaries, within which he will be located and within which he will perform inspection services regularly, (b) address at which his license will be posted, (c) the inspection arrangements at such point, and (d) the inspection equipment and apparatus which will be available to him. If the Administrator, or any officer of the Department designated by him for the purpose, is satisfied that the inspection arrangements and facilities at the disposal of such licensed inspector are adequate and in accordance with the requirements of the act and the regulations in this part, he shall approve such place of posting as an established inspection point. Such license thereafter shall be kept conspicuously posted at such approved place and shall not be removed to any other place unless notice in advance be given by the licensee to the district headquarters office for the district in which the posting was last approved. Immediately after such notice such inspector shall secure approval of the new place of posting as provided in this section.

§26.13 Inspector to give notice of changes. Each licensed inspector shall immediately, in writing or by telegraph, inform the district headquarters office in his district of any change in the point or points where he performs service as a licensed inspector, or in the nature of his duties or of his employment, or of any suspension of his activities for such length of time as to impair the inspection facilities at any point, and except in case of a State grain inspector, of any change in the schedule of fees for services performed by him as a licensed inspector.

§26.14 Reporting violations, adulteration, irregularly loaded cars, etc. Each licensed inspector shall immediately report to the district headquarters office of his district evidence coming to his knowledge tending to show:

(a) That any provision of the act or regulations has been violated;

(b) That any grain, inspected and graded, or to be inspected and graded, under the act or regulations has been irregularly loaded, or so loaded as to conceal evidently inferior grain, or has been improperly inspected and graded by any licensed inspector; or

(c) That any grain has been or is to be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act of June 25, 1938 (52 Stat. 1040; 21 U.S.C. 301-392), as amended, by the addition of water, dirt, screenings, or other material, whether the grade be changed or not.

§26.15 Instructions by Federal grain supervisor. Each licensed inspector shall execute diligently all instructions for carrying out the act and the regulations, issued to him, directly or indirectly, by the grain supervisor in charge of the district wherein his license is posted, or by any officer of the Department engaged in administering the act and regulations, and, upon request, shall advise such grain supervisor in full detail of any facts regarding inspection and grading equipment used by him, inspection services performed by him, and compensation received therefor.

§26.16 Instructions by chief inspectors. No chief, or supervising inspector, licensed under the act, shall issue to licensed inspectors under his supervision any instructions inconsistent with the act or regulations. Each licensed inspector shall immediately report to the district headquarters office for the district in which his license is posted, any instructions issued contrary to this section.

§26.17 Discriminatory and unreasonable fees forbidden. Whenever, after citation, the Administrator shall determine that discrimination has been practiced or unreasonable fees demanded by any licensed inspector, he may order their discontinuance. Failure on the part of any licensee to conform to such order shall be regarded as a violation of this section.

§26.18 Inspection and grading consist of. Inspection and grading of a lot or parcel of grain tendered for inspection and grading under the act shall consist of taking and examining a representative sample thereof and making such tests as are necessary to determine its grade. For each inspection and grading, a certificate of grade shall be issued, and failure on the part of a licensed inspector to issue such certificate of grade will be regarded as a violation of this section.

§26.19 Inspection and grading, when required. Each licensed inspector whose license remains in effect shall, without discrimination, as soon as practicable,

and upon reasonable terms, inspect, grade, and issue a certificate of grade for each inspection of any grain of the kind mentioned in his license the inspection and grading of which are required under the act, provided such grain be offered and made accessible during customary business hours at the point where he performs service as a licensed inspector, and under conditions which permit the taking of a representative sample and the proper determination of the grade of the grain.

§ 26.20 Inspector may inspect grain, when. Each licensed inspector may, at any time upon request of any interested party, inspect, grade, and certificate the grade of grain for which he holds a license, at any point, if the conditions permit the taking of a representative sample and the proper determination of the grade of the grain, provided that no licensed inspector shall perform inspection service at any regularly established inspection point other than the market in which his license is posted without notifying and securing in advance the approval of the grain supervisor in charge of the district headquarters office in which the grain is to be inspected. Whenever a licensed inspector shall designate a point for inspection, in addition to his established inspection point, he shall in advance furnish such information regarding sampling, inspection equipment, and inspection arrangements, as may be required by the grain supervisor in charge of his district and shall secure approval thereof by the Administrator or by such officer of the Department as may be designated by the Administrator for the purpose. Thereafter no other licensed inspector shall perform inspection and grading service at such designated point for inspection without securing in advance the approval of the grain supervisor. This section shall not be construed to prevent a State grain inspection department from transferring its employees to establish inspection points where their services may be required within such State.

§ 26.21 Inspection and grading to be based on representative sample. No licensed inspector shall issue a certificate of grade for any grain unless the inspection and grading thereof be based upon a correct and representative sample of the grain and be made under conditions which permit the determination of its true grade, except as provided in §§ 26.22 and 26.34. Each licensed inspector shall take proper precautions to insure that no sample be exposed to manipulation which would deprive it of its representative character from the time of its collection until the grade be determined. No sample shall be deemed to be representative unless of the size, and procured in accordance with the methods, prescribed in instructions issued by the Administrator or by such officer of the Department as may be designated by him for the purpose, which are in effect at the time of the inspection and grading.

§ 26.22 Inspection and grading of submitted samples. Any licensed inspector may inspect and grade a submitted sample or package of grain, provided that the certificate issued in such case clearly shows that the inspection and grading covers only the submitted sample or package as required by § 26.29.

§ 26.23 Inspector not to be interested in grain. No licensed inspector shall be interested, financially or otherwise, directly or indirectly, in any grain elevator or warehouse, or in the merchandising of grain, including the binning, mixing, blending, drying, or other preparation of grain for purposes of warehousing, storage, shipment, or otherwise, nor shall he be in the employment of any person or corporation owning or operating a grain elevator or warehouse, nor shall he issue a certificate of grade for any grain in which he is directly or indirectly financially interested. [20 F.R. 8417, Nov. 10, 1955]

§ 26.24 Qualifications of sampler. No licensed inspector shall issue a certificate of grade for a lot or parcel of grain based upon a sample thereof drawn by a sampler who is not employed by him or his inspection department, or who is not an employee of the United States Department of Agriculture approved for the purpose by a grain supervisor, or who is interested, financially or otherwise, directly or indirectly, in the grain involved or in any grain elevator or warehouse or in the merchandising of grain, including the binning, mixing, blending, drying, or other preparation of grain for purposes of warehousing, storage, shipment, or otherwise, or who is in the employment of any person or corporation owning or operating a grain elevator or warehouse, or who the licensed inspector knows or has reason to believe is incompetent. [20 F.R. 8417, Nov. 10, 1955]

§ 26.25 Reinspections. No licensed inspector shall issue a certificate of grade which supersedes a previous inspection and grading, except on the following conditions:

(a) When the application for reinspection has been filed not later than the close of business on the second business day following the date of the inspection to be superseded;

(b) Before the identity of the grain has been lost and before the grain has left the place where the inspection to be superseded was performed;

(c) When the superseding inspection and grading are based on a representative sample;

(d) When the superseding inspection and grading are performed as promptly as possible after the application for reinspection has been filed; and

(e) When to the inspector's knowledge no Federal appeal has been taken from the inspection and grading which are to be superseded.

§ 26.26 Reinspection certificates. Whenever any licensed inspector shall issue a certificate of grade as the result of a reinspection, such reinspection certificate shall bear a conspicuous notation on the face thereof indicating the fact of such reinspection and shall clearly identify the certificate which it supersedes.

§ 26.27 Inspection not to be made, when. No inspection shall be made of any grain which is to be loaded into a vessel, vehicle, or other container, if it appears that the hold, compartment, or other enclosure into which the grain is to be loaded is in such condition as to contaminate the grain or lower the grade.

§ 26.28 Form of certificate to be approved. No certificate of grade shall be issued under the act until its form has been approved by the Administrator, or by such officer of the Department as may be designated by him for the purpose.

§ 26.29 Certificates, form of. Each certificate of grade issued under the act by a licensed inspector shall, except as permitted in § 26.28, embody within its written or printed terms:

(a) The caption Grain Inspection Certificate;

(b) A statement showing whether it is an original or a duplicate, or other copy;

(c) A statement showing whether the inspection represents an in, out, export, cargo, submitted sample, reinspection, "in" heavily loaded car, local elevator bin, or otherwise, as the case may require. For "in" inspections of grain arriving at any inspection point in railway cars, except in the case of a heavily loaded car as provided in § 26.34, the certificate shall have stamped or printed upon either the face or the reverse side thereof substantially the following:

This certificate is valid for "in" inspection, but not for "out" inspection, except when shipment is made in the same car not later than close of second business day after date hereof and without removal of grain or any change of its identity.

If printed or stamped on the reverse side, the words, "See reverse side" shall be conspicuously stamped or printed on the face of the certificate;

(d) The name of the State, board of trade, chamber of commerce, exchange, or other organization, if any, by which the licensed inspector is regularly authorized or employed to inspect and grade grain;

(e) The name of the established inspection point at which the licensed inspector performs inspection service regularly;

(f) The consecutive number, or other means of identification, of the certificate;

(g) The date the inspection was performed;

(h) The statement that the certificate is issued by an inspector holding a license, under the United States Grain Standards Act, to inspect and grade the kind of grain covered by the certificate;

(i) The location of the grain at the time of sampling, and its identification by (1) car initials, car number, and name of carrier or other owner or operator of track, or (2) name or other designation of boat or vessel and hold number or other place of stowage, or (3) name or other designation of elevator or warehouse and of bin or compartment, or (4) otherwise as the case may require;

(j) A statement of the approximate quantity of grain covered by the certificate stated either in carloads, or in bushels, or by weight;

(k) The kind of grain covered by the certificate;

(l) The grade of the grain, as determined by such licensed inspector, according to the official grain standards of the United States;

(m) A statement of the factor or factors that determine the grade, except in the case of grade No. 1. Certificates for grain of any grade may contain a statement of any or all factor determinations. The requirements of this paragraph shall not be mandatory on certificates issued for export shipments;

(n) A statement of the test weight per bushel whether or not such factor determines the grade. In the case of wheat and rye the test weight shall be stated in terms of pounds and tenths of a pound. In the case of corn, barley other than western barley, oats, feed oats, mixed feed oats, grain sorghum, flaxseed, soybeans, and mixed grain, the test weight shall be stated in terms of whole and half pounds and for this purpose a fraction of a pound when equal to or greater than one-half shall be treated as one-half and when less than one-half shall be disregarded. In the case of western barley, the test weight shall be stated in terms of whole pounds and shall appear in the grade designation only. The requirements of this paragraph, except for test weight of western barley, shall not be mandatory on certificates issued for export shipments;

(o) A statement of the moisture content in terms of whole percent and tenths of a percent for any grain graded "Tough"; and may contain a statement of the moisture content in terms of whole percent and tenths of a percent for any grain of any grade. The requirements of this paragraph shall not be mandatory on certificates issued for export shipments;

(p) The signature of the licensed inspector who determined the grade of the grain, affixed by him or by his authorized agent; and

(q) In case of an inspection of a submitted package or sample of grain, the words "Sample Inspection" in conspicuous type, together with a statement which shall clearly show that the inspection covers only the package or sample submitted and does not represent the grade of the lot or parcel of grain from which the portion submitted purports to have been taken.

§ 26.30 Additional statements on certificates subject to approval. In addition to the matters required or permitted by the regulations, the certificate of grade may include only such additional matter as may be approved by the Administrator, or by such officer of the Department as may be designated by him for the purpose.

§ 26.30a Additional statements which may be included on certificates. The following statements have been approved by the Director of the Grain Division, Agricultural Marketing Service, and may upon request of an applicant for inspection be included in accordance with this section and instructions issued by the Director on certificates of grade:

Dockage and foreign material combined do not exceed ----- percent

or

Dockage, foreign material, and shrunken and broken kernels combined do not exceed ----- percent

or

Dockage and foreign material combined do not exceed ----- percent
Shrunken and broken kernels do not exceed ----- percent.

Any one of the three foregoing statements may be included on a certificate of grade for an export cargo shipment of wheat, other than as a part of the grade designation, provided the shipment is uniformly loaded as to the items covered by the requested statement. The percentage shown shall be the average percentage found during the inspection and grading of the wheat. When equal to one percent or more, the percentage shall be stated in terms of whole percent and tenths of a percent, and when less than one percent shall be stated in terms of tenths of a percent. Requests for the statements may be withdrawn by the applicants for inspection at any time prior to the issuance of the certificates of grade showing the statements. [25 F.R. 5444, June 11, 1960]

§ 26.31 Signature of inspector. When the signature of the licensed inspector is affixed by his authorized agent, the agent shall identify himself on such certificate in connection with such signature, by initialing or otherwise.

§ 26.32 Date of inspection. In order to determine the date of inspection and grading at any point for the purposes of the regulations in this part, each day shall be deemed to end at midnight unless otherwise fixed by agreement of the licensed inspectors and the trade at such point with the approval of the supervisor in charge of the district headquarters office for the district in which such inspection point is located.

§ 26.33 Certification of crop year, prohibited. No inspector licensed under the act shall certify or otherwise indicate in writing that any grain for which standards have been established is "new crop," or "old crop," nor the year in which any grain was produced.

§ 26.34 "Heavily loaded car" certificates. In case any licensed inspector is called upon to make an "in" inspection and grading of a carload of grain, in sacks or in bulk, which is so heavily loaded as to make it possible to secure only

a door probe, shallow probe, door sack probe, or interior surface sack probe, sample of the carlot, and appears not to have been irregularly loaded; and the licensed inspector has no reason to believe is so loaded as intentionally to conceal evidently inferior grain, he may, if the act and the regulations be otherwise complied with, inspect and grade such carlot of grain and issue a certificate of grade therefor, upon the conditions set forth in this section.

(a) The inspection and grading of such grain must be based upon a sample which represents all of the grain which can be reached by the use of the customary probes in the drawing of samples from such grain.

(b) The certificate must show that it represents an "in" inspection.

(c) There must be legibly and conspicuously stamped or printed on the face of such certificate the words "HEAVILY LOADED CAR."

(d) The certificate must bear a legible statement indicating the kind of sample obtained.

(e) The certificate must bear the following statement, "This certificate not valid for 'out' inspection."

(f) The statements required by paragraphs (d) and (e) may appear either on the face or the reverse side of the certificate, but if either statement appears on the reverse side, the words "See reverse side of this certificate" shall be stamped or printed immediately below the words "HEAVILY LOADED CAR."

(g) The daily record prescribed in §§ 26.40 and 26.41 shall show, with respect to such grain, that the car was "heavily loaded," or shall show the abbreviation, "h. l."

(h) No heavily loaded car certificate shall be issued for any inspection other than the kind described in this section.

(i) Nothing in this section shall prevent any person, otherwise entitled under the act and regulations, from taking an appeal from an inspection and grading of the kind described in this section, if a representative sample or samples be obtainable for the purpose of the appeal; nor shall anything in this section prevent any person, if he so desires, from having an unqualified inspection of the lot or parcel of grain performed by the same or any other licensed inspector, provided the grain be made accessible for sampling in accordance with the requirements of § 26.21.

§ 26.35 Copies of superseded certificates. No licensed inspector shall issue, nor permit to be issued over his signature, any copy of a grain inspection certificate which has been superseded by a Federal appeal grade certificate, without first notifying the district grain supervisor and securing his approval of such issuance.

§ 26.36 Inspection after appeal. In the case of grain which has been inspected and graded by a licensed inspector and regarding which an appeal has been taken to the Secretary, no licensed inspector in the same market shall thereafter issue a certificate of grade for the purpose of the same shipment or transaction without showing satisfactory reasons therefor and securing in advance the approval of the district grain supervisor.

§ 26.37 Inspector not to prevent appeal. No licensed inspector shall, directly or indirectly, by any means whatsoever, deter or prevent, or attempt to deter or prevent, any party from taking an appeal to the Secretary.

§ 26.38 Methods of certification. Certificates of grade issued by licensed inspectors shall conform to the regulations in this part and shall meet the requirements set forth in instructions, pursuant to this section, issued from time to time by the Administrator, or by such officer of the Department as may be designated by him for the purpose.

§ 26.39 Certification of grain in vessels. In the inspection and grading of lots, parcels, and cargoes of grain loaded aboard boats, barges, and other vessels, licensed inspectors shall be governed by the following requirements:

(a) If such a lot, parcel, or cargo tendered for inspection and grading be uniform in quality and condition, the grade shall be based upon an average sample thereof and certificated accordingly;

(b) If such lot, parcel, or cargo so tendered is not uniform in quality and condition by reason of the presence therein of a material portion of grain of a different grade, the licensed inspector shall consider the portions of such lot, parcel, or cargo which are of different grades as separate lots tendered for inspection, and shall separately inspect, grade, and certificate as to grade such different portions; and each such certificate of grade shall bear a statement to the effect that the grain to which it applies has been loaded on board

with other grain, the grade, description, and approximate quantity of which shall be specified.

§ 26.40 Inspector to make records. Each licensed inspector shall keep complete and correct records of all grain inspected and graded by him, which shall be open for inspection and examination by any grain supervisor or by any person designated for the purpose by the Administrator, and which shall contain, separately for each lot or parcel of grain inspected and graded by such licensed inspector, the information required for compliance with § 26.41.

§ 26.41 Record to be made accessible. Each licensed inspector shall, as soon as possible after grading any grain and not later than the close of business on the next following business day, make accessible to the interested parties at the place where his license is posted, a record of each lot or parcel of grain inspected and graded by him, showing (a) the date the grading was performed; (b) the kind and grade of the grain; (c) its location at the time of sampling and its identification by either (1) car initials, car number, and name of carrier or other owner or operator of track, or (2) name or other designation of boat or vessel and hold number or other place of stowage, or (3) name or other designation of elevator or warehouse and of bin or compartment, or (4) otherwise as the case may require; (d) the name of the person for whom the service was performed, or his agent; and (e) the name of such licensed inspector. Copies of licensed inspectors' grade certificates which contain the required information may be used as the record for compliance with this section. The sample upon which the certificate of grade is based shall, while in the possession or under the control of the licensed inspector or his inspection department, be part of the record of such inspection and as such shall be made accessible to any grain supervisor in the district in which such inspection is made.

§ 26.42 Copies of certificates to be filed with supervisor. Each licensed inspector, as soon as possible after grading any grain and not later than the close of business on the next following business day, shall transmit to the district headquarters office in the district in which the grain was located at the time of sampling, a true copy of the certificate of grade therefor.

§ 26.43 Supervisor may extend time limit. Upon a showing by a licensed inspector, or in his behalf by his inspection department, of an emergency or other good cause, the grain supervisor in charge of the district headquarters office may extend the time prescribed for compliance by such licensed inspector with any one or more of the provisions of §§ 26.40, 26.41, and 26.42.

§ 26.44 Suspension, cancellation, and revocation of licenses. (a) *Suspension or cancellation upon request.* Upon a written request and a satisfactory statement of reasons therefor, submitted by a licensed inspector, the Secretary may, without hearing, suspend for a definite period of time, or may cancel, the license issued to such licensed inspector.

(b) *Suspension, pending investigation.* Pending investigation, the Secretary, whenever he deems necessary, may suspend a license temporarily, without hearing.

(c) *Suspension or revocation for cause.* In all other cases, before a license is suspended or revoked, the licensed inspector involved shall be furnished by the Secretary, or by an official of the Department designated by the Secretary for the purpose, a written notice to show cause why his license should not be suspended or revoked for reasons specified in such notice, and shall be allowed a reasonable time within which to answer the same in writing and submit affidavits and other proper evidence. If requested by such licensed inspector, within the time allowed for answering, or in the discretion of the Administrator, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by the Administrator, or an officer of the Department designated by him for the purpose.

(d) *Service of notice.* Service of such notice shall be made by delivering the same to the licensed inspector, but if he cannot be found, in the exercise of reasonable diligence, at the inspection point where his license is posted as required by § 26.12, such service shall be made by delivering the notice to an adult member of his immediate family or by registered mail to his last-known residence address. Service by registered mail shall be deemed to have been made on the date shown on the registry return receipt.

(e) *Hearings.* Hearings for the purposes of this section shall be in accordance with § 26.79. A copy of the notice to show cause, the answer thereto.

copies of all other notices and orders, and all the evidence shall be made a part of the records of the Department.

§ 26.45 Issuance of licenses after suspension or cancellation. Upon a written request and satisfactory evidence of competency, submitted by a person whose license has been suspended or canceled, the Secretary may terminate the period of suspension or may issue to such person a new license for the kinds of grain covered by the canceled license.

§ 26.46 Surrender of license, when. Any licensed inspector who is not making inspections regularly under his license, shall, upon request of the district grain supervisor, surrender his license to be canceled. When any licensed inspector, who received his license by reason of his being a State grain inspector, ceases to be a State grain inspector, he shall, upon request of the district grain supervisor, surrender his license for cancellation. The Secretary may cancel any license not surrendered as provided for by this section.

APPEALS

§ 26.47 Appeal, when may be taken. An appeal shall be taken (a) before the grain leaves the inspection point where the inspection appealed from was made; (b) before the identity of the grain has been lost; (c) when the conditions otherwise are as prescribed in section 6 of the act; and (d) as promptly as possible, but not later than the close of business on the second business day following the date of the inspection appealed from, except as provided in § 26.52.

§ 26.48 Appeals, how taken. An appeal shall be taken to the Secretary by filing an application for appeal in writing or by telegraph, in the district headquarters office in the district in which the inspection appealed from was made: Provided, That in his discretion the officer in charge of general field headquarters of the Grain Division may authorize the entertaining of an appeal in another district headquarters office.

§ 26.49 Advance notice of appeal. Any party desiring to appeal may, in advance, transmit to the proper district headquarters office, by telegraph, telephone, or otherwise, such information as may be necessary to enable a grain supervisor in such office to proceed to the examination of the grain involved.

§ 26.50 Contents of application. An application, in the form prescribed by the Department, signed by the appellant, shall state: (a) That the grain involved was shipped, delivered for shipment, consigned for sale, sold for shipment, or offered for sale for shipment in interstate or foreign commerce; (b) the identification and definite location of the grain at the time of taking the appeal; (c) the names and post-office addresses of all other parties interested in the grain involved, if any; (d) such other information as may be required by the district headquarters office in which such application is filed or by the Administrator.

§ 26.51 Inspection certificate, filing of. The appellant may be required to file or cause to be filed, in the district headquarters office mentioned in § 26.48, the certificate of grade for the grain involved, issued by the licensed inspector from whose inspection the appeal is taken, if the same be in his possession. If such certificate be in the custody or control of the licensed inspector, he shall upon request immediately transmit or deliver it to said office.

§ 26.52 Extension of time. Upon satisfactory showing of the discovery of fraud, or that on account of distance the time allowed for filing is not sufficient, or other good cause, the grain supervisor in charge of the office mentioned in § 26.48 may permit the filing of an application after the time prescribed therefor in this part, and a statement of such action shall be included in the record of such appeal.

§ 26.53 Date of filing. Each application or statement shall be deemed filed in a district headquarters office when delivered thereto.

§ 26.54 Receipt of papers to be recorded. The official of the Department receiving any paper offered for filing shall note thereon, or on a record kept by him for the purpose, the place and date of its receipt.

§ 26.55 Opportunity for hearing. Opportunity for hearing will be afforded interested parties as provided in section 6 of the act, if application therefor be made to the grain supervisor entertaining the appeal within 10 days after the issuance of the final Federal appeal grade certificate. If no request for hearing be made by an interested party, such hearing will be deemed waived. The

Secretary or the Administrator, however, may order a hearing to investigate the circumstances surrounding an appeal.

§ 26.56 Notice of hearing. Whenever a hearing is set pursuant to § 26.55, notice of the time and place thereof shall be served a reasonable time in advance upon each party or his agent.

§ 26.57 Oral hearing, before whom held. When a hearing at which oral evidence may be submitted by the parties is granted or ordered, it shall be held before the Secretary, or before such officer of the Department as may be designated by the Secretary, or by the Administrator.

§ 26.58 Testimony under oath. The testimony of witnesses at an oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held. Such hearing may be postponed or adjourned by the official from time to time.

§ 26.59 Production of books and papers. Any official before whom an appeal is heard may require the production and submission in evidence by any party to such appeal of all books, papers, and documents in his custody or under his control, evidencing or relating to the transaction, the grain or other matter, involved in, or relevant to, the appeal.

§ 26.60 Appeal may be dismissed, when. A grain supervisor may dismiss any appeal filed in his office for noncompliance with the regulations, or if it shall appear that the Secretary is without jurisdiction to determine the appeal in accordance with the act or the regulations. Any application, statement, or other paper filed by any party may be stricken from the files if it fails to comply with the regulations in this part. Upon dismissal or withdrawal of an appeal, the certificate of grade filed therein shall be immediately returned to the person by whom filed, or delivered upon his written order. No appeal may be withdrawn after the issuance of a Federal appeal grade certificate.

§ 26.61 Supervisor to determine grade. The sample or samples of grain involved in an appeal, complying with §§ 26.72 and 26.73, shall be examined as soon as possible, such tests shall be applied as are necessary, the papers and all other available evidence shall be carefully considered, and, except as provided in § 26.60 a Federal appeal grade certificate shall be issued by the grain supervisor entertaining the appeal, showing the grade assigned by him to such grain which shall be the final Federal appeal grade certificate unless superseded as provided in § 26.63. Such Federal appeal grade certificate shall supersede the certificate of grade for the grain involved, and such inspection certificate shall not thereafter represent the grade of the grain.

§ 26.62 Objection to supervisor's grade may be filed. Any party to an appeal may, not later than the close of business on the next business day after the issuance of the Federal appeal grade certificate mentioned in § 26.61, file with the grain supervisor issuing the same, a statement objecting to the grade shown. The said grain supervisor may, for good cause shown, permit the filing of such statement after the time prescribed therefor in this section.

§ 26.63 Review by board. If such objection be filed as provided in § 26.62, a sample or samples of the grain involved, the papers and all other evidence shall be immediately submitted to a board of grain supervisors constituted for the purpose by the Administrator, which board shall carefully consider the papers and all available evidence, and make such examination and apply such tests as may be necessary to determine the grade of the grain. Such board shall, if the regulations be complied with, issue or cause to be issued a Federal appeal grade certificate showing the grade assigned by such board to the grain, which Federal appeal grade certificate shall supersede the Federal appeal grade certificate previously issued for such grain and shall be the final Federal appeal grade certificate issued.

§ 26.64 Direct appeal to board. Such board may, upon showing of special urgency, hear an appeal in the first instance without compliance with §§ 26.61 and 26.62, and in accordance with the procedure described in § 26.63.

§ 26.65 Original and copies of Federal appeal grade certificate. Every Federal appeal grade certificate shall be numbered and shall, by number or otherwise, identify the certificate which it supersedes. The original of the Federal appeal grade certificate, issued by the grain supervisor and marked as such, shall be delivered to the party, or upon the written order of the party, who filed the appeal. The original of the Federal appeal grade certificate, issued by a board of grain supervisors and marked as such shall be delivered to the party, or upon the written order of the party, who filed the objection to the supervisor's grade.

A copy of each Federal appeal grade certificate marked as such shall be furnished to each interested party, if any, other than the party to whom, or upon whose order, the original Federal appeal grade certificate is furnished.

§ 26.66 Findings of the Secretary. A copy of the findings of the Secretary will be furnished to any interested party upon request.

DISPUTES

§ 26.67 Disputes, how taken. A dispute shall be submitted to the Secretary by filing a complaint in conformity with § 26.70, either in writing or by telegraph, in the district headquarters office in the district where the grain is then located.

§ 26.68 Complaint, time of filing. Such complaint shall be filed as promptly as possible, but not later than the close of business on the second business day after the grain involved becomes subject to examination by the contracting parties at the point where the grade is disputed. The grain supervisor hearing the dispute may, for good cause shown, permit the filing of such complaint after the time prescribed in this section.

§ 26.69 Advance notice of dispute. Any party desiring to refer a dispute may transmit, in advance, to the proper district headquarters office by telegraph, telephone, or otherwise, such information as may be necessary to enable a grain supervisor in such office to proceed to the examination of the grain involved.

§ 26.70 Contents of complaint. A complaint signed by the complainant shall state (a) the name and post-office address of each party; (b) the kind of grain and the grade thereof, claimed by each party; (c) the respective interests of the complainant and the respondent in the transaction; (d) that the grain involved was sold, offered for sale, or consigned for sale by grade, and shipped in interstate or foreign commerce without inspection from a place at which there is no licensed inspector to a place at which there is no licensed inspector, and the points of shipment and destination; (e) the time when the grain became subject to examination by the party receiving it, at the point where the grade is disputed; (f) the location of the grain and its identification; and (g) any other material facts.

§ 26.71 Appeal regulations applicable to disputes. The provisions of §§ 26.47 to 26.66, relating to appeals, which in substance are applicable to disputes, and in respect to which no special provision is made by §§ 26.67 to 26.70, are hereby made applicable to disputes.

SAMPLES IN APPEALS AND DISPUTES

§ 26.72 Representative sample. No appeal or dispute shall be determined except upon the basis of a representative sample of the grain involved. Such sample shall be drawn by a person authorized for the purpose by either the Administrator or the grain supervisor in charge of the district headquarters office in which the appeal or dispute is heard, provided the parties in interest shall have the grain made accessible and placed under such conditions as to permit the taking of a representative sample.

§ 26.73 Representative samples, how procured. For the purposes of an appeal or dispute no sample shall be deemed representative unless of the size, and procured in accordance with the method, prescribed in instructions issued by the Administrator, or by an officer of the Department designated by him for the purpose, in effect at the time of taking the appeal or referring the dispute.

DEPARTMENT CHARGES AND FEES

§ 26.74 Fees and charges. The fee in an appeal or a dispute shall be fixed as follows:

- (a) For bulk or sacked grain in carload lots, \$9.00 per car;
- (b) For bulk or sacked grain in trucks and trailers, \$5.50 per truck or trailer lot;
- (c) For bulk or sacked grain in boats, barges, or other vessels, \$2.25 per thousand bushels or fraction thereof, with a minimum of \$5.00 per lot;
- (d) For a submitted sample or package of grain, \$3.50 per sample or package;
- (e) For all lots of grain other than those referred to in paragraphs (a), (b), (c), and (d) of this section, \$2.25 per thousand bushels or fraction thereof, with a minimum fee of \$5.00 per lot;

(f) Charges for overtime, night, or holiday work performed by employees of the Department on account of an appeal or a dispute shall be determined at the rate of \$6.40 per manhour per employee and shall include the following: A minimum charge of two hours shall be made for an unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or which is performed by an employee on his regular work day beginning either at least one hour before his scheduled tour of duty or at least one hour after he has completed his scheduled tour of duty, and has left his place of employment. In addition, each such period of unscheduled overtime work which requires an employee to perform additional travel for which he would otherwise not be compensated, and each period of holiday duty, may include a commuted travel time period, provided such commuted travel is performed solely on account of such overtime duty. The amount of this commuted travel time period, determined to be necessary to cover the time spent in reporting to and returning from the place at which the employee performs overtime duty, is hereby established as one hour. The charges for overtime shall be in addition to the fees prescribed in paragraphs (a) to (e) of this section, and shall be paid in all cases, whether the appeal be sustained or not sustained. [25 F.R. 8247, Aug. 30, 1960.]

§ 26.75 Fees, against whom assessed. The fees so fixed shall, in case of an appeal, be assessed against the appellant, and in case of a dispute against the complainant.

§ 26.76 Deposits. For each appeal or dispute filed in any district headquarters office of the Grain Division there shall be delivered to such office a check (certified, if required by the Administrator), or a post-office or express money order, payable to the order of "Treasurer of the United States" for an amount sufficient to cover the fees, at the rate specified in § 26.74 (a), (b), (c), and (d). Additional sums may be required by the official hearing the appeal or dispute when deemed necessary by him as deposits. Any part of such deposit which may remain after payment of the fee assessed shall be returned to the party depositing the same. In case an appeal be sustained, the amount of the fee assessed shall be refunded. All fees not covered by advance deposits shall be payable immediately upon notice of the assessment of the fee, and shall be paid by check (certified, if required by the Administrator), or a post-office or express money order drawn to the order of "Treasurer of the United States."

The grain supervisor in charge of a district headquarters office shall hold each deposit in his custody until the final Federal appeal grade certificate or final Federal dispute grade certificate shall have been issued, and it has been determined, in case of an appeal, whether the same has been sustained or not sustained. In case an appeal is not sustained, and in case of a dispute, the sum received by the grain supervisor as a deposit, shall be transmitted to the Department for deposit in the Treasury of the United States of such amount as may be due the Government, and for the refund of any excess deposit to the depositor thereof.

HEARINGS

§ 26.77 Hearings, notice and record. Notice shall be given of any oral hearing under this part. The hearing shall be held before and at a time and place fixed by the Administrator, or an officer of the Department designated by him for the purpose. Such hearing shall be in accordance with § 26.79. A copy of the charges, copies of all other notices and orders, and all the evidence shall be made a part of the records of the Department.

§ 26.78 Section 5 cases. In case a hearing is ordered in connection with an alleged violation of, or an investigation under, section 5 of the act, a written notice of the time and place of such hearing shall be given by the Secretary or the Administrator to the owner or shipper of the grain involved, to the licensed inspector, if any, who inspected the grain, and any other interested parties, such reasonable time in advance as will enable the persons notified, if they so desire, to attend the hearing. Persons notified shall, in advance of the hearing, be furnished with a written statement of the charges or subject matter of the investigation, and shall be afforded opportunity to submit evidence in their own behalf.

§ 26.79 Conduct of hearings. Hearings under the regulations in this part shall proceed in accordance with this section. The testimony of witnesses shall be upon oath or affirmation administered by the officer before whom the hearing is held. The officer before whom an oral hearing is held may exclude obviously

irrelevant evidence, but the party offering such evidence may state what he expects to prove thereby. Any witness may, in the discretion of the officer holding the hearing, be examined separate and apart from all other witnesses except the interested parties. Such hearing, for good cause appearing to the satisfaction of such officer, may be postponed or adjourned by him from time to time. When good cause for such action appears to the Administrator, the evidence of any material witness may be taken under oath or affirmation by deposition. Such deposition shall be taken after reasonable notice to the parties interested and at a time and place and before a person designated for the purpose by the Administrator. The expense of taking such deposition shall be borne by the party in whose behalf it is taken. A true copy of every written entry in the records of the Department, made by an officer or employee thereof in the course of his official duty, which is relevant to the issues involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Oral argument will be permitted before the hearing officer at the close of the hearing and any argument advanced will be embodied in the record. Written brief or argument may be submitted and made a part of the record if received by the hearing officer within 15 days after the close of the hearing. This period may be extended by the hearing officer for good cause shown. Except as otherwise provided in this section, the expense of reducing the evidence to writing for the purposes of the record in any hearing shall be borne by the Department.

PROVISIONS GOVERNING GRAIN MERCHANDISING

§ 26.80 **Inspection to be obtained, where.** For each shipment of grain in interstate or foreign commerce from or to a place where a licensed inspector is located, which is sold, offered for sale, or consigned for sale by grade, an inspection by a licensed inspector must, in accordance with section 4 of the act, be obtained at the shipping point, at some convenient point en route, or at destination.

§ 26.81 **Limitations on use of "heavily loaded car" certificate.** For the purposes of the act, an "in" inspection "heavily loaded car" certificate shall not be valid to represent the grade of the grain covered thereby for an "en route" inspection nor for an "out" shipment from the place of such inspection.

§ 26.82 **Arrival inspection valid for out shipment of reconsigned cars.** An "in" inspection of grain in a railroad car performed on arrival at an inspection point, except in the case of a heavily loaded car, shall also be deemed valid for the purpose of out shipment from such inspection point under the following conditions only:

- (a) When the out shipment or delivery for shipment is made not later than the close of the second business day after the date of such inspection;
- (b) When the grain covered by the inspection has not in the meantime been removed or transferred from the car in which it was inspected;
- (c) When the identity of the grain has not been changed; and
- (d) When the certificate of grade bears the statement regarding its validity for "in" and "out" inspection as required by § 26.29 (c).

Nothing contained in this section shall be construed as authorizing an inspector to refuse to comply with a request for another inspection and the issuance of a regular "out" or other inspection certificate when necessary for the purposes of the act and regulations.

§ 26.83 **Certificate which has been superseded shall not represent grade of grain.** When a certificate of grade issued by a licensed inspector shall have been superseded, under this part, by a certificate issued as a result of a reinspection, or by a Federal appeal grade certificate, such superseded certificate of grade shall not thereafter represent the grade of the lot or parcel of grain described therein.

§ 26.84 **Final appeal or dispute grade certificate supersedes previous certificates.** No Federal appeal grade certificate or Federal dispute grade certificate shall represent the grade of a lot or parcel of grain described therein after it shall have been superseded, under this part, by a final Federal appeal grade certificate or final Federal dispute grade certificate.

§ 26.85 **Required inspections not to be prevented.** Whenever, under the act and regulations, inspection and grading of any grain by a licensed inspector is required, no person entitled under the act and regulations to have such inspection and grading performed, shall be deprived of his right thereto by any rule, regula-

tion, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization, or by any contract, agreement, or understanding whatsoever.

§26.86 Right of appeal or dispute not to be impaired. No rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization, nor any contract, agreement, or understanding, shall be ground for refusing to hear and determine any appeal taken or any dispute referred to the Secretary in compliance with the act and regulations.

§26.87 Uninspected grain. Whenever any grain for which standards shall have been fixed and established under the act is sold, offered for sale, or consigned for sale by any of the grades fixed therefor in the official grain standards of the United States, and such grain is shipped in interstate or foreign commerce without inspection from a place at which there is no inspector licensed under the act to a place at which there is no such inspector, the shipper shall promptly transmit to the purchaser or consignee an invoice covering such grain, which invoice shall bear a statement, written, typewritten, or affixed with a rubber stamp, to the effect that the grain involved has not been inspected by a licensed inspector and that the grade thereof is subject to dispute under the act. Such statement may be worded as follows: "This grain not officially inspected; grade subject to dispute privilege under United States Grain Standards Act." Any such shipper shall, upon request by the Agricultural Marketing Service, submit a statement showing the following with respect to any shipment or with respect to such shipments made within given period of time to be specified in the request: (a) the date of shipment, (b) the kind of grain, (c) the quantity thereof, (d) the grade by which it is sold, offered for sale, or consigned for sale, (e) the point of shipment and destination thereof, (f) the name of the initial carrier, (g) the car initial, and number, or the name or other designation of the vessel, boat, barge, or vehicle, as the case may be, in which such grain is shipped, (h) the name of the shipper, and (i) the name of the consignee.

§26.88 Loaning of samples. In the discretion of the Director of the Grain Division of the Agricultural Marketing Service, limited numbers of samples illustrating the official grain standards of the United States, or specially prepared exhibits illustrating any part of such standards, may be loaned by the Department without charge to governmental agencies for official purposes or to educational institutions of higher learning and to trade organizations for demonstration purposes.







